

### COMPLIANCE SCHEDULE PROVISIONS CONTAINED WITHIN THE “POLICY FOR IMPLEMENTATION OF TOXICS STANDARDS FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA”

The “*Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*” (SIP) was adopted by the State Water Resources Control Board (State Water Board) on March 2, 2000 and applies to discharges of toxic pollutants into the inland surface waters, enclosed bays, and estuaries of California subject to regulation under the State's Porter-Cologne Water Quality Control Act and the federal Clean Water Act. Such regulation may occur through the issuance of National Pollutant Discharge Elimination System (NPDES) permits, or other relevant regulatory approaches. The goal of the SIP was to establish a standardized approach for permitting discharges of toxic pollutants to non-ocean surface waters in a manner that promotes statewide consistency.

The SIP was effective on April 28, 2000 with respect to the priority pollutant criteria promulgated by the U.S. Environmental Protection Agency (USEPA) through the National Toxics Rule (NTR) and to the priority pollutant objectives established by Regional Water Quality Control Boards (Regional Water Boards) in their water quality control plans (Basin Plans), with the exception of the provision on alternate test procedures. The alternate test procedures provision was effective on May 22, 2000. The SIP was effective on May 18, 2000 with respect to the priority pollutant criteria promulgated by the USEPA through the California Toxics Rule (CTR). The SIP does not apply to discharges of toxic pollutants from combined sewer overflows or to regulation of nonpoint source discharges.

The SIP includes language authorizing the inclusion of compliance schedules in NPDES permits for effluent limitations established to achieve compliance with the promulgated criteria for CTR priority pollutants. The SIP authorizes compliance schedules of up to five years from the date of a NPDES permit issuance, re-issuance, or modification to comply with effluent limitations based on CTR criteria. An additional 15 years could be granted to first develop and adopt a Total Maximum Daily Load (TMDL) and establish waste load allocations (WLAs) and effluent limitations based on the WLAs. However, this specific SIP provision was disapproved by the USEPA on October 23, 2006. USEPA stated that one reason this provision was disapproved was because developing and adopting a TMDL does not constitute a remedial action by a permittee to achieve compliance, but is a rather a state process and responsibility, and therefore not an appropriate application of compliance schedules. USEPA further found that it is not appropriate to defer the establishment of a water quality-based effluent limit until a TMDL has been developed, but that compliance schedules must provide for achievement of water quality-based effluent limitations as soon as possible.

The compliance schedule provisions contained in Chapter 2 of the SIP are shown below. Definitions in the SIP for acronyms, abbreviations, and terms used in this chapter have been added as footnotes. Note that Footnote (3) is an actual footnote in the SIP.

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## 2. DETERMINING COMPLIANCE WITH PRIORITY POLLUTANT CRITERIA/OBJECTIVES AND WATER QUALITY-BASED EFFLUENT LIMITATIONS FOR PRIORITY POLLUTANT CRITERIA/OBJECTIVES

Compliance with priority pollutant criteria/objectives and water quality-based effluent limitations established pursuant to section 1 shall be determined according to the following provisions for (1) compliance schedules (section 2.1), (2) interim requirements (section 2.2), (3) monitoring requirements (section 2.3), and (4) reporting requirements including compliance determinations (section 2.4). In determining compliance with effluent limitations based on intake water credits, only the monitoring requirements (section 2.3) and the reporting requirements (section 2.4) apply. In determining compliance with effluent limitations derived from TMDLs, only the compliance schedule provisions (section 2.1) apply.

### 2.1 Compliance Schedules

Based on an \*existing discharger<sup>1</sup>'s request and demonstration that it is \*infeasible<sup>2</sup> for the discharger to achieve immediate compliance with a CTR criterion<sup>3</sup>, or with an effluent limitation based on a CTR criterion, the RWQCB<sup>4</sup> may establish a compliance schedule in an NPDES permit. Compliance schedules shall not be allowed in permits for \*new dischargers<sup>5</sup>.

A schedule of compliance shall include a series of required actions to be undertaken for the purpose of achieving a CTR criterion and/or effluent limitations based on a CTR criterion. These actions shall demonstrate reasonable progress toward the attainment of a CTR criterion and/or effluent limitations. The compliance schedule shall include a

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<sup>1</sup> The SIP defines "existing discharger" as "any discharger that is not a new discharger. An existing discharger includes an "increasing discharger" (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after the effective date of this Policy)."

<sup>2</sup> The SIP defines "infeasible" as "not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

<sup>3</sup> CTR criteria, for purposes of this section, exclude NTR criteria.

<sup>4</sup> "RWQCB" means "Regional Water Board". Reference to a RWQCB also refers to the State Water Board, where appropriate.

<sup>5</sup> The SIP defines "new discharger" as including "any building, structure, facility, or installation from which there is, or may be, a discharge of pollutants, the construction of which commenced after the effective date of this Policy."

schedule for completion that reflects a realistic assessment of the shortest practicable time required to perform each task. The compliance schedule shall contain a final compliance date based on the shortest practicable time required to achieve compliance. The deadlines to complete each action in the compliance schedule shall be specified in the NPDES permit and shall be accompanied by interim requirements as described in section 2.2.1. When a compliance schedule exceeds one year from the date of permit issuance, interim limitations with specific compliance dates (as described in section 2.2.1) shall be included in the NPDES permit. If the final compliance date extends beyond the permit term, the final compliance date and supporting explanation shall be included in the permit findings.

The discharger shall submit to the RWQCB the following justification before compliance schedules may be authorized in a permit: (a) documentation that diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts; (b) documentation of source control and/or pollution minimization efforts currently underway or completed; (c) a proposed schedule for additional or future source control measures, \*pollutant minimization<sup>6</sup> actions, or waste treatment (i.e., facility upgrades); and (d) a demonstration that the proposed schedule is as short as practicable.

The schedule of compliance for point source dischargers in an NPDES permit shall be as short as practicable but in no case exceed the following:

- A. Up to five years from the date of permit issuance, reissuance, or modification to complete actions (such as pollutant minimization or facility upgrades) necessary to comply with CTR criterion-based effluent limitations that are derived with or without a TMDL. Such actions shall include the development and adoption of a site-specific objective, if appropriate, as provided in section 5.2.
- B. Up to 15 years from the effective date of this Policy to develop and adopt a TMDL, and accompanying Waste Load Allocations (WLAs) and Load Allocations (LAs), as described in section 2.1.1, below.

In no case (unless an exception has been granted in accordance with section 5.3) shall a compliance schedule for these dischargers exceed, from the effective date of this Policy:

- a) 10 years to establish and comply with CTR criterion-based effluent limitations; or
- b) 20 years to develop and adopt a TMDL, and to establish and comply with WLAs derived from a TMDL for a CTR criterion (i.e., up to 15 years to complete the TMDL and up to five years to comply with a TMDL-derived effluent limitation).

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<sup>6</sup> The SIP defines “pollutant minimization” as “waste minimization and pollution prevention actions that include, but are not limited to, product substitution, waste stream recycling, alternative waste management methods, and education of the public and businesses.”

### **2.1.1 TMDL-Based Compliance Schedule**

The compliance schedule provisions for the development and adoption of a TMDL only apply when: (a) the discharger requests and demonstrates that it is \*infeasible for the discharger to achieve immediate compliance with a CTR criterion, or with an effluent limitation based on a CTR criterion; and (b) the discharger has made appropriate commitments to support and expedite the development of the TMDL. In determining appropriate commitments, the RWQCB should consider the discharge's contribution to current loadings and the discharger's ability to participate in TMDL development.

For \*bioaccumulative<sup>7</sup> priority pollutants for which the receiving water has been included on the CWA Section 303(d) list, the RWQCB should consider whether the mass loading of the bioaccumulative pollutant(s) should be limited to representative, current levels pending TMDL development in order to implement the applicable water quality standard.

### **2.1.2 Interim Requirements**

If a compliance schedule is allowed (in accordance with section 2.1) or a schedule is allowed to collect and provide data needed to establish water quality-based effluent limitations for a CTR criterion (in accordance with provisions in section 1), interim requirements shall be included in an NPDES permit.

### **2.1.3 Interim Requirements Under a Compliance Schedule**

If a compliance schedule is granted (in accordance with section 2.1), the RWQCB shall establish interim requirements and dates for their achievement in the NPDES permit. If the compliance schedule exceeds one year, the RWQCB shall establish interim numeric limitations for the priority pollutant in the permit and may also impose interim requirements to control the pollutant, such as \*pollutant minimization<sup>8</sup> and source control measures. Numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. If the existing permit limitations are more stringent, and the discharger is not in compliance with those limitations, the noncompliance under the existing permit must be addressed through appropriate enforcement action before the permit can be reissued, unless antibacksliding provisions are met.

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<sup>7</sup> The SIP defines "bioaccumulative pollutants" as "those substances taken up by an organism from its surrounding medium through gill membranes, epithelial tissue, or from food and subsequently concentrated and retained in the body of the organism."

<sup>8</sup> The SIP defines "pollutant minimization" as "waste minimization and pollution prevention actions that include, but are not limited to, product substitution, waste stream recycling, alternative waste management methods, and education of the public and businesses."

There shall be no more than one year between interim dates. The interim requirements shall state that the discharger must notify the RWQCB, in writing, no later than 14 days following each interim date, of its compliance or noncompliance with the interim requirements.

If the compliance schedule is within the term of the permit, the final effluent limitations shall be included in the permit provisions. If the compliance schedule exceeds the length of the permit, the final effluent limitations shall be included in the permit findings. In the latter case, the findings shall include: (1) the water quality to be achieved; (2) the reason that a final water quality-based effluent limitation is not being incorporated into the permit as an enforceable limitation at this time; (3) a statement that it is the intent of the RWQCB to include, in a subsequent permit revision, the final water quality-based effluent limitation as an enforceable limitation (based either on the CTR criterion directly or on future regulatory developments, such as TMDL or site-specific objective development). The permit findings shall also state the appropriate enforcement actions that may be taken by the RWQCB if interim limitations and requirements are not met.

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